Mohd Azri bin Abdul Samad v Public Prosecutor

HIGH COURT (MUAR) — CRIMINAL APPEAL NO 42–25 OF 2007
AHMADI ASNAWI JC
20 JANUARY 2010

Criminal Law — Anti-Corruption Act 1997 — s 11(a) — Accepting gratification — Appeal against conviction and sentence

Criminal Procedure — Appeal — Petition of appeal — Failure to set out in petition issue complained about on appeal — Whether such issue could be raised on appeal — Criminal Procedure Code s 307(6)

The appellant appealed against his conviction and sentence by the sessions' court on a charge of corruptly accepting a gratification, an offence under s 11(a) of the Anti-Corruption Act 1997 ('Act'). He had been charged for accepting RM600 from PW2 to refrain from taking action against PW1 and PW2 in respect of *khalwat* — an offence under the Syariah Criminal Offences Enactment (Johor) 1997. In his appeal, the appellant raised, inter alia, the following issues: (a) PW1's delay in lodging a report (P4) to the Anti Corruption Agency ('the ACA'); (b) PW2's failure to lodge a report; (c) the sessions court's failure to consider that the appellant had agreed to refer PW1 and PW2 to counselling; and (d) there were doubts relating to the execution of the trap in particular the acceptance of the trap money.

Held, dismissing the appeal:

(1) The issue concerning PW1's delay in lodging the report was not set out in the appellant's petition of appeal and thus the mandatory requirement of s 307(6) of the Criminal Procedure Code had not been complied with. The appellant was shut out from ventilating such issue in the appeal (see para 10); *Yan Wing Lee v Public Prosecutor* [1994] 2 CLJ 453 followed.

(2) Although PW2 himself did not lodge a complaint that the appellant did corruptly agree to accept the RM600 from him, upon the totality of the evidence, it did not negate the factum of such corrupt acceptance by the appellant through PW2. The absence of such complaint by PW2 did not render PW2's evidence unworthy of credit nor erode its reliability nor reduce PW2's evidence to naught. There were only minor discrepancies in the evidence of the prosecution witnesses that did not erode the foundation of the prosecution's case. The evidence of these

witnesses survived the test of cross-examination and left no room to doubt that the appellant had accepted the sum corruptly for himself through PW2 (see paras 19 & 24–25).

(3) The conduct of the appellant belied his innocence. It did not run in tandem with the appellant's declared intention of referring the matter to counseling. The appellant had failed to rebut the presumption under s 42 of the Act. The third ground of appeal was also without basis (see paras 30–31).

(4) Counsel did not elaborate on the doubts relating to the execution of the ACA trap. Thus this ground did not merit any further consideration. The appeal against the sentence imposed ought to be dismissed since there was no submission on the same (see paras 35–36).

[Bahasa Malaysia summary

Perayu merayu terhadap sabitan dan hukuman oleh mahkamah sesyen atas tuduhan menerima rasuah, kesalahan di bawah s 11(a) Akta Badan Pencegah Rasuah 1997 ('Akta'). Dia telah dituduh menerima RM600 daripada PW2 untuk menghalangnya daripada mengambil tindakan terhadap PW1 dan PW2 berkaitan dengan khalwat — satu kesalahan di bawah Enakmen Kesalahan Jenayah Syariah (Johor) 1997. Dalam rayuannya, perayu membangkitkan, antara lain, isu-isu berikut: (a) kelewatan PW1 untuk membuat laporan ('P4') kepada Badan Pencegah Rasuah ('BPR tersebut'); (b) kegagalan PW2 untuk membuat laporan; (c) kegagalan mahkamah sesyen untuk mempertimbangkan bahawa perayu telah bersetuju untuk merujuk PW1 dan PW2 kepada kaunseling; dan (d) terdapat keraguan berkenaan dengan pelaksanaan perangkap tersebut terutamanya penerimaan wang perangkap tersebut.

Diputuskan, menolak rayuan:

(1) Isu berkenaan dengan kelewatan PW1 dalam membuat laporan tidak dinyatakan dalam petisyen rayuan perayu dan oleh itu, kehendak mandatori s 307(6) Kanun Prosedur Jenayah telah tidak dipatuhi. Perayu telah disekat daripada menyuarakan isu tersebut dalam rayuan (lihat perenggan 10); *Yan Wing Lee v Public Prosecutor* [1994] 2 CLJ 453 diikut.

(2) Walaupun PW2 tidak membuat aduan bahawa perayu telah secara korup bersetuju untuk menerima RM600 daripadanya, berdasarkan keseluruhan keterangan tersebut, ia tidak menyangkal fakta tentang penerimaan korup oleh perayu melalui PW2. Ketiadaan aduan oleh PW2 tidak menjadikan keterangan PW2 tidak boleh dipercayai atau menjejaskan kebolehpercayaannya atau menjadikan keterangan PW2 sia-sia sahaja. Hanya terdapat percanggahan kecil dalam keterangan saksi-saksi pendakwaan yang mana tidak akan menjejaskan asas kes

pendakwaan. Keterangan saksi-saksi tersebut berjaya melepasi ujian pemeriksaan balas dan tidak meninggalkan sebarang ruang untuk keraguan bahawa perayu telah menerima jumlah tersebut secara korup untuk dirinya sendiri melalui PW2 (lihat perenggan 19 & 24–25).

(3) Perilaku perayu tidak menampakkan ketakbersalahannya. Ia tidak seiring dengan niat yang telah dinyatakan oleh perayu untuk merujuk perkara tersebut kepada kaunseling. Perayu telah gagal untuk mematahkan anggapan di bawah s 42 Akta tersebut. Alasan ketiga rayuan juga adalah tanpa asas (lihat perenggan 30–31).

(4) Peguam tidak menjelaskan dengan lebih terperinci tentang keraguan berhubung dengan pelaksanaan perangkap BPR. Oleh itu, alasan ini tidak perlu dipertimbangkan dengan selanjutnya. Rayuan terhadap hukuman yang dikenakan seharusnya ditolak memandangkan tidak terdapat hujahan mengenainya (lihat perenggan 35–36).]

Notes

For a case on Anti-Corruption Act 1997, s 11(a) in general, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) para 18.

For cases on petition of appeal, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 576–579.

Cases referred to

Abdullah bin Jacomah v PP [2002] 6 MLJ 324; [2002] 8 CLJ 1, HC (distd)

Chean Siong Guat v PP [1969] 2 MLJ 63, HC (refd)

Herchun Singh & Ors v PP [1969] 2 MLJ 209, FC (refd)

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719; [1995] 2 CLJ 713, CA (refd)

Muthusamy v PP [1948] MLJ 57, HC (refd)

Neville v PP [1992] 1 SLR 153, CA (distd)

PP v Datuk Haji Harun bin Haji Idris (No 2) [1977] 1 MLJ 15, HC (refd)

Shayne Corey Cahill v Kaka Singh Dhaliwal [2008] 2 MLJ 709; [2008] 3 CLJ 198, CA (refd)

Tengku Mahmood v PP [1974] 1 MLJ 110, HC (refd)

Yan Wing Lee v PP [1993] MLJU 99; [1994] 2 CLJ 453, HC (folld)

Legislation referred to

Anti-Corruption Act 1997 ss 11(a), 42

Criminal Procedure Code s 307(6)

Syariah Criminal Offences (Johor) Enactment 1997 s 29

Manian K Marappan (Manian K Marappan & Co) for the appellant.

Nazrul Nizar (Deputy Public Prosecutor, Prosecution Division) (Head Office of BPR Malaysia) for the respondent.

Ahmadi Asnawi JC:

[1] The appellant was convicted by the learned sessions court judge Batu Pahat upon the following charge levelled against him:

> Bahawa kamu pada 13.12.2001, jam lebih kurang 7.30 petang ditempat letak kereta Tasik Y, di Daerah Batu Pahat, didalam Negeri Johor, sebagai ejen, iaitu Pembantu Hal Ehwal Islam di Pejabat Agama Batu Pahat, yang bertugas di Unit Penguatkuasaan telah secara rasuah menyetuju terima, untuk diri kamu, iaitu wang tunai RM600.00 daripada Saifudin bin Osman sebagai suatu dorongan untuk tidak melakukan suatu perbuatan berhubung dengan hal ehwal principal kamu, iaitu untuk tidak membawa kes terhadap Mohd Saifudin bin Osman dan Fara Hernani binti Jaafar yang melakukan kesalahan bawah seksyen 29, Enakmen Kesalahan Jenayah Syariah, Johor 1997, ke Mahkamah dan dengan demikian kamu telah melakukan suatu kesalahan dibawah seksyen 11(a) Akta Pencegah Rasuah 1997 (Akta 575) yang boleh dihukum dibawah seksyen 16 Akta yang sama.

THE FACTS IN BRIEF

[2] On 9 July 2004, Saifudin bin Osman (PW2) and his woman companion (PW1) who was then a student nurse at Kolej Kejururawatan Batu Pahat, were arrested by the appellant with his team of enforcement officers from Pejabat Agama Islam, Batu Pahat for committing 'khalwat' (close proximity) in a car at the parking lot of Taman Tasik Y Batu Pahat, at about 9pm, an offence under s 29 of the 'Enakmen Kesalahan Jenayah Syariah Johor 1997'. Both were then taken to the guard house of Pejabat Agama Islam, Batu Pahat ('pejabat agama'). The appellant then issued to both of them *surat perjanjian dan jaminan* (exhs P2 and P5) wherein they were to present themselves at the said pejabat agama on 12 July 2004.

[3] Both presented themselves at the pejabat agama on the appointed date. After their statements were taken by the appellant, they were issued with another surat perjanjian dan jaminan (exhs P4 and P6). They were again required to present themselves at the same office on 16 August 2004. Again they presented themselves before the appellant on 16 August 2004. Now they were asked by the appellant to choose the date convenient to them to appear before the Mahkamah Syariah on any Thursdays in September 2004.

[4] Fearing expulsion from her *Kolej* if her case is taken to court, PW1 pleaded to the appellant not to charge her in court for the alleged khalwat offence. The appellant replied that the matter could be discussed. Even earlier after 12 July 2004, she had called the appellant for such favour. No court date were chosen or given though at this instant (16 August 2004).

[5] Months later, the appellant sent a message (SMS) to PW1 reminding her that she is to appear in court. She could not now remember this date. She telephoned the appellant and pleaded not to charge her in court. The appellant allegedly replied that if she were to be prosecuted in court, she would be expelled from her *Kolej* and will have to pay RM60,000 as penalty to the government. He is willing to help her if she is prepared to pay him RM59,000. The sum was reduced to RM58,000 after PW1 said that it was too much for her to bear. She then left it at that.

[6] However, a few days later she called the appellant again and repeated her pleas that the sum be further reduced. Now the appellant demanded RM600 only in return of his favour in not charging PW1 in court. PW2 was kept informed by PW1 of the events unfolding before her.

[7] After much deliberation both PW1 and PW2 decided to see Badan Pencegah Rasuah ('BPR'). On 10 December 2004 PW1 lodged a formal complaint against the appellant with the BPR. Her complaint is exh P4. The BPR sprung into action. The appellant was finally arrested by BPR officers on 13 December 2004 at about 7.30pm at Tasik Y after he instructed PW2 to put the RM600 solicited by him at the rear seat of the car he was driving. The location where the said money is to be transacted was suggested by the appellant to PW2 when PW2 came to see him at his office over the same on the morning of 13 December 2004. The serial numbers of the money recovered by the BPR officer at the rear seat of the car tallied with the serial numbers of the marked notes the BPR gave to PW2 to be transacted to the appellant.

[8] In his submissions, learned counsel for the appellant advanced four grounds of appeal in terms as follows:

(a) The first ground of appeal

Delay in lodging the report exh P4 by PW1.

[9] Learned counsel submitted that PW1 and PW2 were arrested on 9 July 2004 but the report (exh P4) was lodged only on 10 December 2004, about five months after the incident and quoted *Tengku Mahmood v Public Prosecutor* [1974] 1 MLJ 110 to suggest that a long delay in lodging the report allows room for fabrication. There was no explanation from PW1 to account for the delay either. Learned counsel also submitted that PW1 also did not state in her report the location where the appellant had agreed to accept the said sum. Hence material facts relating to the entrapment of the appellant is inadmissible.

[10] However learned DPP countered that these issues now canvassed before me was not set out in the appellant's petition of appeal and therefore the mandatory requirement of s 307(6) of the Criminal Procedure Code ('CPC') was not complied with. Hence learned counsel is now shut out from ventilating these grounds/issues in the hearing of the appeal. Learned DPP also relied on the ruling in *Yan Wing Lee v Public Prosecutor* [1994] 2 CLJ 453.

[11] I am entirely with the learned DPP. The provision in s 307(6) provides that '… Every petition of appeal shall state shortly the substance of the judgment appealed against and shall contain definite particulars of the points of law or fact in regard to which the court appealed from is alleged to have erred …'. The provision is clear that it calls for a mandatory construction of the said provision. Definite particulars of the points of the law or fact to be raised in the appeal must be set out clearly in the petition of appeal and the appellant is then bound by his petition. There can be no doubt that the appellant is prevented to spring surprises at his opponent by ventilating issues not set out in his petition of appeal. That is the object and purport of the said provision. I would thus wholeheartedly embraced the ruling in *Yan Wing Lee v Public Prosecutor* in respect of the construction of the said s 307(6) of the CPC. The learned DPP is correct in his submissions that learned counsel is barred from submitting issues relating to the delay in PW1's report to the BPR as the same was not set out in his petition of appeal in contravention of s 307(6) of CPC.

[12] Of course learned counsel came back with authorities of his own. He cited *Shayne Corey Cahill v Kaka Singh Dhaliwal* [2008] 2 MLJ 709; [2008] 3 CLJ 198 and *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719; [1995] 2 CLJ 713. However these are appeals relating to civil matters where the ground rules are different as opposed to criminal appeals where the parties are statutorily bound by the requirements of s 307(6) of the CPC. Meanwhile the issues in *Abdullah bin Jacomah v Public Prosecutor* [2002] 6 MLJ 324; [2002] 8 CLJ 1 and *Neville v Public Prosecutor* [1992] 1 SLR 153 relates to the trial judge's failure to consider a defence or all possible defences posited by or available to the accused. It is entirely a different kettle of fish altogether with the issues prevailing before me.

[13] Even on the facts, learned counsel's submissions on these issues could not also hold water. The demand for the RM600 was not made on the date PW1 and PW2 were arrested ie 9 July 2004 but was made months later. PW1 could not remember when exactly it was. PW2 said it was made sometimes in late November 2004. The lapses by both these witnesses in respect of the date of the demand is understandable. It is due to human fallibilities and

A cognitive powers of remembrance and recollection. It is part of everyday life. I can accept such inadequacies and it does not occasioned an erosion of the credit worthiness of both witnesses.

B **[14]** However PW1 went on to say that nothing happened for a long time after meeting the appellant on 16 August 2004 until one fine day the appellant SMSed her after which there were demands and appeals between the two until the sum was finally settled at RM600 by the appellant as set out in the earlier paragraphs. PW1 added that it was very soon after the said sum C was firmed up by the appellant that she and PW2 decided to see the BPR and thereafter lodged the said complaint, exh P4. In such event I can see no delay in the lodging of the said complaint by PW1.

D **[15]** As regards to the submissions that the said exh P4 did not state the venue where the appellant had agreed to accept the said RM600, PW2's evidence is most relevant. He said that he saw the appellant on the morning of 13 December 2004 to discuss about the said payment. It was at this meeting (13 December 2004) that the appellant directed that the said sum is E to be paid to him that same evening outside his office. In such event the venue where the money is to be transacted obviously could not be stated in the complaint, exh P4, as exh P4 was lodged much earlier on 10 December 2004 where details of the said transaction has not been finalised as yet by the parties concerned, in particular the appellant. Verily learned counsel's F contention in connection with this issue is groundless.

(b) The second ground of appeal

[16] Learned counsel submitted that the charge states that the appellant G corruptly agrees to accept for himself RM600 from PW2 but PW2 did not lodge any complaint of this fact to BPR. This was admitted by PW2 in cross-examination. This was also conceded by PW9, the BPR officer who effected the arrest of and subsequent search on the person of the appellant and who had earlier prepared the Senarai Wang Bertanda, exh P10 and who H had also seized the said marked notes, exh P9 from the appellant's car. Additionally PW2 also admitted that apart from exh P4 there were no other statements to the BPR that the appellant had agreed to accept the said RM600 from him (PW2). In the final analysis it boils down to the completeness and reliability of exh P4.

I

[17] Apart from stating the aforesaid facts per se and meticulously copying down and highlighting the evidence pertaining to the same as recorded in the *rekod rayuan* ('RR'), learned counsel makes no submissions as regards to its consequences in law and the consequential effect it would have had on the

propriety of the findings of the trial court in so far as the guilt of the accused is concerned. In such event this ground of appeal does not merit any further consideration.

[18] However, notwithstanding the same, exh P4 is merely information received that triggers the investigation machinery. Though important, exh P4 cannot be treated as substantive evidence. It is only a basis for the commencement of investigation. The Federal Court in *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209 at p 211 thus stated the position as follows:

> All that is required for purpose of this section is that there should be clear, definite information about the commission of a cognizable offence to set the investigation machinery in motion. Further the information required need not contain the circumstances of the commission of the offence, nor the names of the offenders or the witnesses, for the main purpose of investigation is to ascertain these matters … The first information report is not an encyclopedia … It is only a complaint to set the affairs of law and order in motion.

[19] Hence although PW2 himself did not lodge a complaint that the appellant did indeed corruptly agrees to accept the RM600 from him, upon the totality of the evidence as adduced, it did not and could not ever negate the factum of such corrupt acceptance by the appellant through PW2. The absence of such complaint by PW2 did not render PW2's evidence unworthy of credit nor erode its reliability nor reduced PW2's evidence to nought. Additionally PW2's name was mentioned in exh P4. Of equal substance is PW1's statement in exh P4 that '… Azri telah meminta bayaran RM600 untuk menyelesaikan kes dan tidak mendakwa kami di mahkamah …'. Upon the totality of exh P4, the word 'kami' obviously refers to both PW1 and PW2, the person named as Mohd Saifuddin bin Osman in exh P4.

[20] Further the evidence of PW2 clearly indicated that the appellant had agreed to accept the said corrupt money for himself from PW2. PW2 testified that a day two after exh P4 was lodged, the BPR instructed PW1 to see the appellant relating to his demand of RM600. Since PW1 could not make it, he (PW2) was instructed to see the appellant. He went to see the appellant on the morning of 13 December 2004 at the appellant's office. He asked whether his case could be dropped or settled. The appellant replied that he could settle the case provided he was paid RM600. He refused PW2's further request to lower the sum as he needed further help from other officers to settle the case. PW2 agreed to pay RM600 to the appellant provided that he is not taken to court.

[21] PW2 then enquired how the said sum is to be paid. He was told by the appellant to meet him outside the office in the evening and he will call (telephone) him to decide the place and time to hand over the money.

[22] PW2 then went back to BPR office. He briefed the BPR officers of what took place. He was asked to come back to BPR office at 5pm. He went home and came back to BPR office at 5pm. He attended another briefing and was given the trap money amounting to RM600, exh P9. He also signed the Senarai Wang Bertanda exh P10. He is to lift his cap once the trap money is transacted.

[23] He was next directed by the BPR to call the appellant. The appellant gave the instruction to see him at Tasik Y at 6pm. He fetched PW1 and both proceeded to Tasik Y. He arrived at Tasik Y at about 6pm. He called the appellant and was told to wait by the appellant as he was busy. At about 7pm he saw the appellant coming alone in a car. He went towards the appellant but was instructed by the appellant to go to a *pondok* at the Tasik. At the *pondok* after a bit of discussion PW2 wanted to pass the money to the appellant. The appellant refused to accept the money there but told PW2 to put the money inside his car. He followed the appellant to his car. The appellant entered the car and sat at driver's seat and started the car engine. Next the appellant opened the glass window of the rear door behind his seat. The appellant gave a thumb signal pointing to the rear seat. PW2 understood it to mean that he is to put the money at the rear seat of the opened glass window. He went to the car and put the money at the rear seat of the car as indicated by the appellant. Moments later PW7 from the BPR rushed in, identified himself to the appellant, switched off the car engine and took possession of the car keys. He saw the money placed by PW2 at the rear seat of the said car. Soon after other BPR officers surrounded the appellant and his car. The appellant was arrested and the said trapped money was seized from the rear seat of the car.

[24] The events soon after the arrival of the appellant at Tasik Y to the eventual arrest of the appellant as testified by PW2 were substantially in tandem with the evidence given by PW1, PW5, PW6 and PW9 who subsequently effected the arrest of the appellant and seizure of the trapped money found at the rear seat of the said car. Of course there were discrepancies in the testimonies of these witnesses in respect as to how the said RM600 was transacted in particular the testimony of PW1, but as was found by the learned sessions judge, the said discrepancies were minor discrepancies that does not erode the foundation of the prosecution's case — see p 18 of the RR. In any event such minor discrepancies are only to expected in any trial for various reasons — see *Chean Siong Guat v Public*

Prosecutor [1969] 2 MLJ 63; *Muthusamy v Public Prosecutor* [1948] MLJ 57; *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15.

[25] The evidence of these witnesses which survived the test of cross-examination leaves no room but to find that the appellant in fact agreed to accept the said sum corruptly for himself through PW2. This was the finding of the learned sessions court judge as can be seen at pp 17–22 of the RR. Based upon the totality of the evidence as adduced, he was not wrong to come to such finding.

(c) The third ground of appeal

[26] This ground relates to the issue of whether the appellant is empowered to refer both PW1 and PW2 to counselling sessions for an offence under s 29 of the 'Enakmen Kesalahan Jenayah Syariah Johor 1997'.

[27] Learned counsel submitted that PW1 under cross-examination admitted that upon her repeated requests, the appellant agreed to inform his superiors and refer her case to counselling and that she would not be prosecuted in court. Likewise PW2 also agreed to the same and if the matter is referred to counselling his case would be closed. Additionally PW7, a witness from pejabat agama, testified that it is within the discretion of the arresting officer whether to refer the matter to counselling or otherwise prosecute the offenders in court.

[28] Learned counsel submitted that the learned sessions judge did not take into account these facts and the explanation given by the appellant and that his explanation is reasonable, probable and sufficient enough to rebut the presumption under s 42 of the Anti-Corruption Act 1997.

[29] However learned counsel again did not explain further. He left it at that. It makes no sense to me. Notwithstanding the same, the evidence clearly suggested otherwise. The appellant makes no mention of wanting to refer the case to counselling on the day PW1 and PW2 were arrested (9 July 2004) nor on the 12 July 2004 when he recorded the statements of PW1 and PW2 nor on 16 August 2004 when both PW1 and PW2 were asked to choose their appearance date in court at their convenience. The appellant also did not make a police report in respect of the arrest of both PW1 and PW2 as was customarily done to initiate investigation as testified by PW3. The appellant also did not register the arrest of both PW1 and PW2 and the case or offence committed by them in the Buku Daftar Rekod Jenayah Syarii of the Pejabat Agama as testified by PW8. The appellant also did not notify any of his superiors of the arrest of both PW1 and PW2. There were no documents to show that PW1 and PW2's case has been or will be referred to counselling. As far as pejabat agama is concerned, the *khalwat* case involving PW1 and

PW2 does not exist. The issue of referring the matter to counselling was only raised vaguely and intermittenly during phone conversations with PW1 and during his two meetings with PW2 hours before his arrest by the BPR. Five months after both PW1 and PW2 were arrested their matter has yet to be referred to counselling.

[30] In my view the conduct of the appellant enumerated above inherently belied his innocence. It does not run in tandem with the appellant's declared intention of referring the matter to counselling. Both PW1 and PW2 have yet to see their day before the counsellor(s) even up to the day of the appellant's arrest, almost five months after they were arrested by the appellant. There wasn't even an inkling that their matter would be referred to counselling in lieu of charging them in court either by the appellant himself or officially by pejabat agama. What took the appellant so long to refer the matter to counselling if that was the intention of the appellant from the very beginning? Why was the appellant dragging his feet over such a simple matter? Obviously the appellant's declared intention was not reflected by his subsequent pattern of behaviour. His presence at Tasik Y was prearranged and Tasik Y was designated to be the place to accept the corrupt gratification. This was the finding of the learned sessions judge.

[31] At pp 28–32 of the RR the learned sessions judge deliberated in great detail the appellant's contention that his purpose of meeting PW1 and PW2 at Tasik Y on that day (13 December 2004) was to explain to them the procedures involved in referring cases to counselling and the general defence of the appellant. His grounds for rejecting such contention was very comprehensive and at the end of the day he found that the appellant had failed to rebut the presumption under s 42 of the Anti-Corruption Act 1997. I have no wish to repeat his grounds and findings herein but suffice to say that on the facts and evidence I have no grounds to disagree with him. The findings are factual findings and he was not wrong to come to such findings upon the evidence adduced. Thus it does not warrant interference by me nor were there any justification for me to do so.

[32] In my view this third ground of appeal is also essentially without basis. The learned session judge has taken into account the explanation of the appellant but nevertheless rejected the same for reasons enumerated in his grounds at pp 28–32 of the RR.

(d) The fourth ground of appeal

[33] Learned counsel posited the issue of whether there were doubts relating to be the execution of the trap in particular the acceptance of the trap money.

[34] In relation to this issue learned counsel merely reproduced the following in his submissions:

Di muka surat 53 RR, semasa soal balas SP 1 telah berkata:

> Saiful buang duit. Letak tempat duduk belakang. Berapa keping tidak pasti. Nampak duit masuk. Tetapi tidak pasti nilainya wang kertas. Wang tidak diikat. Duit berlipat dua. Jumlah kepingan tidak tahu.

Di muka surat 58 RR:

S: Saifuddin campakan dalam envelope di kerusi belakang.

J: Ya, duit dalam envelope bukan terdedah. Kerusi belakang pemandu. Bahagian belakang. Ramai datang. 1 orang datang.

S: 3 orang belakang motokar, tahan daripada undur.

J: Ya. Nampak.

Nampak BPR rampas kunci kereta. Saya pun beredar.

Di muka surat 140 RR, OKT/Perayu dalam keterangan mengatakan:

> Ketika masuk dalam kenderaan. Cuba hidupkan enjin. 4 tingkap terbuka. Separuh terbuka. Ada ruang — hampir ke bawah — 5 inci terbuka. *Air Cond* tidak ada dalam kereta saya. Kunci biasa. Saya masuk dalam start, SP2 sebelah kanan, Gear reverse — 3 orang dibelakang. SP2 masuk tangan campak sesuatu tempat belakang motokar. Fara ada. Depan tidak bergerak — parit. 3 orang tahan saya panggil SP2 terus jalan. Pandang seorang lelaki ambil kunci dan suruh keluar.
>
> Maka saya berhujah bahawa cara BPR membuat perangkap harus ditimbang dengan 'suspect'.
>
> Oleh yang demikian saya memohon bahawa rayuan Perayu di benarkan.

[35] That was about all. Learned counsel again did not ventilate further the grounds or justifications to treat the BPR's execution of the trap with suspect on account of the contrasting testimonies of PW1 and the appellant enumerated above. In such event it does not merit any further consideration. Such contrasting testimonies between the two adversaries are only to be expected. It is up to the trial judge to weigh its probabilities as tested against the totality of the evidence adduced and make up his mind to accept either one of the two. This the learned session judge has done. He accepted the testimonies of PW1 and PW2 over the appellant's evidence on grounds enumerated at pp 17–20 and 28–32 of the RR. He harboured no doubt at all that the trap money was corruptly accepted by the appellant within the ambit of s 11(a) of the Anti-Corruption Act 1997. Again on the facts and

evidence and the circumstances surrounding the acceptance of the said money, I have no reason to disagree with him.

[36] For all the reasons given I dismissed the appellant's appeal in respect of his conviction. The appeal against the sentence imposed is also dismissed on account that there is no submission mounted upon the same. In my view the sentence imposed is adequate and fair in all the circumstances of the case.

Appeal dismissed.

Reported by Andrew Christopher Simon